BILL NO. S-80-03-33

SPECIAL ORDINANCE NO. S-38-80

AN ORDINANCE approving an Agreement between the City of Fort Wayne, Indiana, and Clearwater Utilities, Inc. for the treatment of sewage material.

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That the Agreement dated March 12, 1980, between the City of Fort Wayne, Indiana, by and through its Mayor and Board of Public Works and Clearwater Utilities, Inc., for:

the treatment of sewage material from Clearwater through connection with the Fort Wayne Sewer System.

of which the Clearwater shall pay the entire cost and expense, all as more particularly set forth in said agreement which is on file in the Office of the Board of Public Works and is by reference incorporated herein, made a part hereof, is hereby in all things ratified, confirmed and approved.

SECTION 2. That this Ordinance shall be in full force and effect from and after its passage and approval by the Mayor.

Councilman

APPROVED AS TO FORM AND LEGALITY MARCH , 1980.

JOHN E. HOFFMAN
City Attorney

Read the first time in full and on motion by Burns, seconded by Eisbart, and duly adopted, read the second time by title and referred to the Committee City Utilities (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Chambers, City-County Building, Fort Wayne, Indiana, on _____, the _____ day of _____, 19____, at _____ o'clock ____ M.,E.S.T.

DATE: 3-25-80

Charles W. Westerman
CHARLES W. WESTERMAN
CITY CLERK

Read the third time in full and on motion by Burns, seconded by Stier, and duly adopted, placed on its passage. PASSED (~~LOST~~) by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT	TO-WIT:
TOTAL VOTES	9				
BURNS	✓				
EISBART	✓				
GiaQUINTA	✓				
NUCKOLS	✓				
SCHMIDT, D.	✓				
SCHMIDT, V.	✓				
SCHOMBURG	✓				
STIER	✓				
TALARICO	✓				

DATE: 4-8-80

Charles W. Westerman
CHARLES W. WESTERMAN - CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (Z~~ONING MAP~~) ~~(GENERAL)~~ ~~(ANNEXATION)~~ (SPECIAL) (A~~PPROPRIATI~~ON) ORDINANCE (RE~~SOLUTION~~) No. S-38-80 on the 8th day of April, 1980.

ATTEST: (SEAL)

Charles W. Westerman
CHARLES W. WESTERMAN - CITY CLERK

Vivian G. Schmidt
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 8th day of April, 1980, at the hour of 11:30 o'clock A M.,E.S.T.

Charles W. Westerman
CHARLES W. WESTERMAN - CITY CLERK

Approved and signed by me this 9th day of April 1980, at the hour of 4 o'clock P M.,E.S.T.

[signature]
WINFIELD C. MOSES, JR.
MAYOR

BILL NO. S-80-03-33

REPORT OF THE COMMITTEE ON CITY UTILITIES

WE, YOUR COMMITTEE ON CITY UTILITIES TO WHOM WAS REFERRED AN ORDINANCE approving an Agreement between the City of Fort Wayne, Indiana, and Clearwater Utilities, Inc. for the treatment of sewage material

HAVE HAD SAID ORDINANCE UNDER CONSIDERATION AND BEG LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID ORDINANCE DO PASS.

PAUL M. BURNS, CHAIRMAN

BEN EISBART, VICE CHAIRMAN

JOHN NUCKOLS

MARK GiaQUINTA

ROY SCHOMBURG

1-8-80

CONCURRED IN

DATE CHARLES W. WESTERMAN, CITY CLERK

68-226-2 HI.
3/13/80

Copy

WATER POLLUTION CONTROL TREATMENT AGREEMENT

BETWEEN

THE CITY OF FORT WAYNE, INDIANA

AND

CLEARWATER UTILITIES, INC.

THIS AGREEMENT (hereinafter referred to as "Agreement"), entered into this 12th day of March, 1980, by and between the CITY OF FORT WAYNE, INDIANA, a municipal corporation of the State of Indiana (hereinafter referred to as "Contractor"), and CLEARWATER UTILITIES, INC., a corporation of the State of Indiana (hereinafter referred to as "Contractee").

W I T N E S S E T H:

WHEREAS, Contractor owns and operates a sewage treatment plant that is presently receiving Federal and State Grant assistance in the expansion of the capacity thereof, and which now has a capacity available for the treatment of sewage material from Contractee; and

WHEREAS, Contractee is an Indiana Corporation which holds Certificates of Territorial Authority from the Public Service Commission of Indiana to render sewage disposal service within certain areas in Washington Township Allen County, Indiana, and desires to contract with Contractor to treat sewage material collected by Contractee; and

WHEREAS, during the term of this Agreement it is anticipated there will be technological and administrative changes which will affect the treatment of sewage material and that said treatment may be handled more efficiently if Contractee does not deliver all sewage material passing through its system to Contractor for processing, and, accordingly, it is understood by and between the parties hereto that Contractee is not hereby required to deliver all or any specific amount of its sewage material to Contractor for treatment, but may treat the same in facilities provided by Contractee or in other publicly or privately owned facilities.

NOW, THEREFORE, Contractor agrees to provide Contractee with sewage treatment service through Contractee's connection with the Fort Wayne sewer system for sewage treatment pursuant to the following terms and conditions:

1. Effective Date: It is understood and agreed between the parties that this Agreement shall become effective after its execution and approval by the Board of Public Works, Common Council to the City of Fort Wayne, by the Board of Directors of Contractee and such regulatory agencies as may be legally required. It is also understood and agreed that this Agreement is also subject to the approval of the Indiana Stream Pollution Control Board, the Indiana State Board of Health, and any other regulatory agency as may be legally required.

2. Term of Agreement. This Agreement shall continue in full force and effect for twenty (20) consecutive years from the effective date of this Agreement.

3. Interconnection. Contractor agrees to accept for treatment in its sewage system, sewage material delivered by Contractee at such tap-in point as shall be designated by the parties and shown on Exhibit "A-2" attached hereto and made a part hereof.

The engineering plans and specifications for any transporting gravity sewer line, pumping stations, measuring devices and appurtenances to connect Contractee's and Contractor's systems at the tap-in point, with copies of such plans and specifications to be in the hands of each party at least two (2) weeks before the same are submitted for approval to the Indiana Stream Pollution Control Board and the Indiana Board of Health in order to allow each party to review and make written comment with respect to said submissions.

It is expressly understood and agreed between the parties that all costs of the tap-in, including the planning, inspection and construction of any transporting gravity sewer line to said tap-in point shall be borne exclusively by Contractee.

4. Acceptance and Treatment of Sewage.

(A) Responsibility for Delivery and Transportation. Contractee shall be solely responsible for delivery of the sewage material in a form suitable for passage through the Fort Wayne sewer line system to the metering point and/or tap-in point. Said sewage material shall be delivered from the Contractee's sewage line system to the tap-in point by either a gravity sewer line or force main. Contractor shall be solely responsible for transporting the sewage material from the metering point and delivering same to its sewage treatment facilities.

(B) Treatment. Contractor shall be solely responsible for the proper treatment and transportation of the sewage materials received from Contractee in accordance with the requirements and standards of the Indiana Stream Pollution Control Board, Indiana State Board of Health and the Environmental Protection Agency.

(C) Sewage Materials Accepted. Contractee shall comply in every applicable regard with Chapter 24 of the Code of the City of Fort Wayne, Indiana of 1977 as amended from time to time thereafter, and as applicable to all users of the system and specifically, but not limited to, Article III, Prohibited Industrial Discharge, and all applicable Rules and Regulations of the Environmental Protection Agency. Contractor shall be under no obligation whatever to accept any type of waste or toxic materials, if said waste or material is a prohibited discharge under the rules of any regulatory agency having jurisdiction over the Contractor's sewage treatment system. Contractor has no obligation to accept radioactive material. It is recognized by Contractee that the Code of the City of Fort Wayne, Indiana of 1977, Chapter 24, may be amended from time to time so as to change the types of waste which must be accepted by Contractor and the parties specifically agree to such amendments; however, this shall not constitute a waiver of Contractee's right to testify or oppose passage of said ordinances and amendments.

Upon discovery that unacceptable sewage materials as defined by Chapter 24 of the Code of the City of Fort Wayne, Indiana of 1977, as amended from time to time, or waste or materials deemed unacceptable pursuant to rules and regulations duly promulgated by any regulatory agency having jurisdiction, are being transmissed by the Contractee's connection to Contractor's system:

(1) Contractor shall immediately notify Contractee of such unacceptable sewage or materials, including the location, time or times, the nature of such unacceptable sewage or waste, and such other information as may be available.

(2) Upon verbal notification and confirmation thereof in writing and Contractee's ability to identify the user responsible for the delivery of such unacceptable sewage materials, Contractee shall notify that user to immediately cease delivery of such materials and/or waste within twenty-four (24) hours.

(3) Contractor shall, in the event Contractee is unable to identify the location, time and source of such unacceptable sewage, cooperate with Contractee in locating such source. The Contractee will use its best efforts to correct or cut off the user delivering unacceptable sewage materials to Contractee's and Contractor's systems.

(4) In the event that the user delivering such unacceptable sewage or materials through Contractee's Interconnection Point to Contractor's system, cannot be ascertained after diligent inquiry by Contractee and Contractor, then Contractee and Contractor shall give notice immediately to the Technical Secretary of the Indiana Stream Pollution Control Board, and request that an emergency investigation be instigated forthwith in regard to the matter. Said emergency investigation shall determine the severity of the damage to Contractor's collection and treatment facilities resulting from the discharge of such unacceptable sewage or materials. After such emergency investigation, the Technical Secretary of the Indiana Stream Pollution Control Board may issue an order mandating Contractee to cease delivering such unacceptable sewage.

(5) In the event Contractee does not comply with said order, then Contractor shall have the right to cease receiving sewage from Contractee at the interconnection point, and may disconnect at Contractee's expense, or take other appropriate action consistent with the order of the Technical Secretary to the Indiana Stream Pollution Control Board until the cause for such action is remedied to the satisfaction of Contractee, Contractor, Environmental Protection Agency and Indiana Stream Pollution Control Board. Provided, however, that the right to cease servicing the entire system of Contractee, as in this paragraph set forth, shall be only for the delivering of unacceptable sewage or waste materials, as provided herein.

(D) Volume. In the event of flow which averages more than 0.300 mgd (hereafter "base mgd"), for any ninety (90) day period (hereafter "qualifying period"), then an additional treatment plant capital charge (hereafter "surcharge"), will be paid by Contractee, subject to the following provision:

(1) This surcharge shall be equal to the capital charge for Contractor's treatment rate for all users multiplied by the ratio of the excess mgd during the qualifying period to the base mgd per 100 cu. ft. thereof.

(E) Cost of Treatment.

(1) Rate. Contractee agrees to pay to Contractor for the conveyance, treatment and billing of sewage flow received at the metering point both in respect of the volume and composition of such flow as set out in the contract rate attached hereto as Exhibit "B".

The rates set forth in Exhibit "B", it is understood by the parties, will be subject to annual review and adjustment whenever the rates charged all other contract users are reviewed and adjusted.

It is understood by and between the parties hereto that Contractee may, in the event of a rate increase by Contractor, apply to the Public Service Commission of Indiana for a rate increase to Contractee's customers. Contractor agrees that it will cooperate in connection with any hearing concerning said rate increase at Contractee's expense to the extent that the rate increase is necessitated by the increase in Contractor's rates to Contractee, but only to that extent.

(2) Metering and Sampling Devices. Contractee shall properly install and maintain the required metering and sampling devices for the purpose of measuring the volume of sewage material delivered by Contractee to the tap-in point for treatment, and to provide sampling and monitoring capability. Said metering and sampling devices shall be constructed in a manner and in a place acceptable to Contractor. The design of meters and metering points shall be approved by Contractor. Each such device shall be subject to the inspection, testing and approval of Contractor at all reasonable times during normal business hours and upon giving one business day's notice to Contractee. Contractee shall have like privileges with regard to any metering and sampling devices installed and maintained by Contractor. For said purposes, and for the purposes of reading and recording data from said meters, each party shall at all times have complete and free access to said metering point and devices.

Either party shall have the right to be present while the other party is exercising its right of inspection and testing or while it is reading and recording data.

Notwithstanding the above, Contractee may, at its expense install a temporary metering device upon execution hereof for purposes of measuring the flow of sewage at the tap-in point until such time as the permanent metering device has been designed, approved and installed. The temporary metering device shall be replaced by the Contractee with the permanent metering device within six (6) months of its installation.

The cost of planning, designing, building and installing any additional metering and sampling devices for an additional tap-in point including acquisition of real estate shall be borne exclusively by Contractee. In addition, Contractee shall assume complete responsibility, including costs, for the installation, maintenance and repair of said metering device and will further defray any costs incurred by reason of testing of the metering devices as requests may be made by Contractor from time to time, provided such requests are reasonable as to frequency and nature of tests required.

Sampling devices which are capable of providing a twenty-four (24) hour composite sample taken hourly shall be installed and maintained by Contractee. The location of such sampling devices and the specifications thereof shall be approved by the Contractor. Composite twenty-four (24) hour sampling will be conducted at the minimum of weekly intervals by Contractor. Parameters to be tested shall include PH, suspended solids, COD, BOD, phosphorus, metal ions, total nitrogen and other testing as required to satisfy Indiana Stream Pollution Control Board and the United States Environmental Protection Agency Regulations.

Material samples as received from the sampling devices shall be available to both contracting parties. In the event the Contractor provides to Contractee testing of samples, the cost of providing additional tests shall be paid by Contractee. The results of tests on samples shall be exchanged between the parties.

(3) Payment. The volume of sewage accepted by Contractor into its sewage system for processing from Contractee as measured by such metering devices shall be determined on or about the first Monday of each calendar month and Contractor shall bill Contractee within thirty (30) days thereafter for the charges applicable under rate schedules then in effect for the previous thirty (30) day metered

period with said bill showing appropriate meter readings. Such charges shall commence on the first date sewage is accepted by Contractor into its sewage system from Contractee for processing. Payment shall be made by Contractee promptly, within thirty (30) days after being billed by Contractor.

(4) Rate Covenants of Contractee.

(A) Contractee shall institute, maintain and enforce a system of user charges in accordance with Section 204 (b) (1), Public Law 92-500 as amended and supplemented and the guidelines and regulations promulgated from time to time thereunder by the Environmental Protection Agency.

(B) Contractor shall cooperate with Contractee in adopting and enforcing rates, rules and regulations for users of the sewage system of the Contractee which are in conformity with the applicable regulatory requirements adopted and enforced by the Contractor for the purpose of permitting the Contractor, on a continuing basis, to be awarded grants from the State of Indiana and from the Environmental Protection Agency and other governmental agencies which may now or in the future offer grants incident to the treatment and collection of sewage.

(C) Contractee shall institute, maintain and enforce an Industrial Cost Recovery System for industrial users (as such users are defined in 40 CFR 35,905), as required under applicable Rules and Regulations of the Environmental Protection Agency with particular reference to paragraphs 35.935-15 and 35.928 of the Rules and Regulations of the Environmental Protection Agency pursuant to Public Law 92-500, and all acts and amendments subsequent thereto.

5. Billing. Contractor will be responsible for reading the metering devices at the metering point and billing the Contractee therefore in accordance with rate schedules then in effect.

6. Litigation. The Contractee agrees and undertakes to hold harmless and indemnify Contractor from any liability damages losses, expenses or costs arising from any action, negligence, or failure to act on the part of Contractee in the operation of its sewage system.

7. Compliance with Rules, Regulations, Standards and Laws. The parties of this Agreement shall comply with all state and federal regulations, standards and laws regarding the collection and treatment of sewage and the operation of their respective systems. In the event studies and/or rehabilitations are necessary or required as a condition of Contractor receiving a sewage grant, Contractee shall fully cooperate with Contractor to satisfy such requirements.

8. Notices. Any notices required or desired to be given under this Agreement may be served personally or by mail. Any notice given by mail shall be deemed to have been served upon certified mailing, return receipt requested, postage prepaid, addressed to the party to be served at the last address filed by such party with the other party. At the date of the execution of this Agreement, Contractor's address is City-County Building, Attention of the Mayor; and Contractee's official address is: Utility Center, 927 South Harrison Street, P. O. Box 875, Fort Wayne, Indiana 46801

9. Benefits. All of the provisions of this Agreement shall inure to the benefit of, and shall be binding upon, the successors and assigns of this Agreement.

10. Rights in Event of Condemnation. If the Contractor shall exercise its right of eminent domain to acquire any or all of the assets of the Contractee, this Agreement shall expire at the time the Contractor takes possession of such assets and becomes responsible for their operation, and all rights herein provided to Contractee shall cease. In the event the Contractor shall exercise its right of eminent domain successfully, the monetary value of the rights and obligations imposed under this Agreement shall not be included upon condemnation. It is the intent of this provision simply to provide that Contractor shall not be required to pay in a comdemnation action for the rights it has hereby bestowed nor shall Contractor receive any benefits from any obligation hereby imposed on Contractee.

11. Severability. This Agreement has been reached in an attempt, among other things, to put an end to the many years of litigation between the parties. Because of term of this Agreement and the many questions which may arise between the parties in the future, the parties realize that disputes may recur and that there may be additional litigation. With full knowledge of this, and in an attempt to minimize the scope of any such litigation, it is hereby agreed by and between the parties that the provisions of this Agreement are severable; and that, in the event one or more such provisions are held invalid or unenforceable, the remaining provisions of the contract shall not be effected but to continue to govern the relationship of the parties according to the terms.

12. Changes in Regulatory Authority. Reference has been made throughout this Agreement to the Public Service Commission of Indiana, the Indiana State Board of Health, the Indiana Stream Pollution Control Board, the Environmental

Protection Agency, and to other regulatory agencies, either by name or by description. It is understood by and between the parties that any such reference to any regulatory agency shall apply not only to such regulatory agencies as presently exists but also to any other agency which may assume the functions of such agency in the future.

13. Complete Agreement. The terms and provisions herein contained constitute the entire Agreement between the parties and shall supercede all previous Agreements and/or Contracts.

CONTRACTOR:

ATTEST:

Charles W. Westerman
Clerk

CITY OF FORT WAYNE, INDIANA

By _____
Winfield C. Moses, Jr.
Mayor

BOARD OF PUBLIC WORKS

ATTEST:

Sandra E. Kennedy
Sandra E. Kennedy, Clerk
BOARD OF PUBLIC WORKS

By _____
Mark L. Akers, Chairman

By _____
Herbert R. Gamache, Member

By _____
Roberta Anderson Staten, Member

CONTRACTEE: CLEARWATER UTILITIES, INC.

ATTEST:

L. DeNeal Hartman
Title L. DeNeal Hartman, Secretary

By James A. Noneman, President
Title

APPROVED AS TO FORM AND LEGALITY

_____
CITY ATTORNEY

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

Before me, a Notary Public in and for said County and State, personally appeared the above named Winfield C. Moses, Jr., Mayor of the City of Fort Wayne, Charles W. Westerman, Clerk of the City of Fort Wayne, Mark L. Akers, Chairman, and Herbert R. Gamache and Roberta Anderson Staten, Members of the Board of Public Works and Sandra E. Kennedy, Clerk of the Board of Public Works, City of Fort Wayne, who acknowledged that they did sign the foregoing Agreement and that the same is their free act and deed.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal, this 13th day of March, 1980.

Anne J. Fox
Notary Public
A resident of Allen County, Indiana

My Commission Expires:
3-6-84

STATE OF INDIANA)
)
COUNTY OF ALLEN)

Before me, a Notary Public in and for said County and State, personally appeared James A. Noneman, President and L. DeNeal Hartman, Secretary of CLEARWATER UTILITIES, INC.

who acknowledged that they did sign the foregoing Agreement and that the same is their free act and deed.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal, this 12th day of March, 1980.

Susann L. Hiatt
Notary Public Susann L. Hiatt
A resident of Allen County, Indiana

My Commission Expires:

April 18, 1981

TITLE OF ORDINANCE SPECIAL ORDINANCE - WATER POLLUTION CONTROL TREATMENT AGREEMENT BETWEEN CITY OF OF FORT WAYNE, INDIANA AND CLEARWATER UTILITIES, INC.

DEPARTMENT REQUESTING ORDINANCE BOARD OF PUBLIC WORKS S-80-03-33

SYNOPSIS OF ORDINANCE WATER POLLUTION CONTROL TREATMENT AGREEMENT BETWEEN THE CITY OF FORT WAYNE, INDIANA, AND CLEARWATER UTILITIES, INC.

CITY, DUE TO FEDERAL AND STATE GRANT ASSISTANCE NOW HAS A CAPACITY AVAILABLE FOR THE TREATMENT OF SEWAGE MATERIAL FROM CONTRACTEE, THROUGH CONNECTION WITH THE FORT WAYNE SEWER SYSTEM.

(AGREEMENT ATTACHED)

EFFECT OF PASSAGE CITY TO BE PAID BY CONTRACTEE FOR THE CONVEYANCE, TREATMENT AND BILLING OF SEWAGE FLOW RECEIVED AT METERING POINT BOTH IN RESPECT OF THE VOLUME AND COMPOSITION OF SUCH FLOW.

EFFECT OF NON-PASSAGE

MONEY INVOLVED (DIRECT COSTS, EXPENDITURES, SAVINGS) CONTRACTEE TO PAY CITY OF FORT WAYNE FOR SEWAGE TREATMENT SERVICE

ASSIGNED TO COMMITTEE City Utilities

EP